

In the Matter of Merchant Mariner's Document No. Z-335098-D1
Issued to: LEON COOPER

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

356

LEON COOPER

This appeal has been taken in conformance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

On 5 May, 1949, Appellant appeared before an Examiner of the United States Coast Guard at Baltimore, Maryland, to answer a charge of misconduct supported by a specification alleging that while Appellant was serving as messman on board the American SS AFRICAN GLEN, under authority of Merchant Mariner's Document No. Z-335098-D1, he unlawfully had in his possession, on or about 7 September, 1947, approximately 374 grains of marijuana.

At the hearing, Appellant was fully informed as to the nature of the proceeding and his statutory and constitutional rights. Appellant voluntarily waived his right to representation by counsel and entered a plea of "guilty" to the specification and charge. At the conclusion of the hearing, the Examiner found the specification "proved by plea," the charge "proved" and he then entered an order revoking Appellant's Merchant Mariner's Document No. Z-335098-D1 and all other valid certificates of service or licenses which had been issued to him.

Appellant contends in his appeal that he should not be punished again because he was imprisoned for seven months as a result of this offense. He also states that he believes the order of revocation is unreasonably severe under the circumstances.

There is no record of any previous disciplinary action having been taken against the Appellant by the Coast Guard.

FINDINGS OF FACT

On or about 7 September, 1947, Appellant was serving as a member of the crew in the capacity of messman on board the American SS AFRICAN GLEN, under authority of Merchant Mariner's Document No. Z-335098-D1, while the ship was in Brooklyn, New York. On this date, Appellant was apprehended by Customs Agents as he attempted to leave a pier at the foot of 33rd Street, Brooklyn, New York, with four marijuana cigarettes on his person. Upon searching Appellant's quarters aboard the ship, the Customs officers discovered a small package of marijuana wrapped in a newspaper. The total quantity of marijuana found in Appellant's possession amounted to 374 grains.

On 2 October, 1947, in the District Court of the United States for the Eastern District of New York, Appellant was sentenced to serve nine months' imprisonment as a result of his plea of "guilty" to a criminal information based on the above facts. His sentence was commuted to seven months for good behavior.

OPINION

The Coast Guard's policy of revocation in proceedings involving narcotics offenses has been so consistently adhered to, as has been repeatedly brought out in my appeal decisions, that it seems unnecessary to do more in this case than to reiterate and emphasize the seriousness of such offenses. The basic reason for such a policy is to protect men, as well as ships, from persons who are associated with narcotics in any way whatsoever. Anyone possessing narcotics is probably a user of it and, consequently, a menace to the merchant marine service. Narcotics are equally dangerous if sold, or given, to young and inexperienced crew members. The above is true because users of narcotics have been known to commit completely unprovoked acts of violence resulting in fatal consequences. Although mere possession of narcotics may not be directly dangerous, the potential threat that it might be used at any time jeopardizes the security of the men and ships to the same extent as does the actual use of narcotics. In view of this explanation and the fact that Appellant submitted no evidence of any extenuating circumstances, I cannot agree with his contention that the order of revocation is unreasonably severe under the circumstances.

Appellant also urges that his imprisonment should exonerate him from any further punishment for this offense. He apparently meant by this either that he had already been sufficiently punished to learn his lesson or that he is protected against further action by the prohibition against being put twice in "jeopardy of life or limb" which is contained in the Fifth Amendment to the United States Constitution.

With regard to the first possibility which Appellant might have had in mind, it has been definitely established by the courts that a proceeding which might result in the forfeiture of a license or document is not part of the punishment for the criminal offense based on the same acts. This proceeding is directed against Appellant's Merchant Mariner's Document and the primary purpose is not to punish Appellant but to protect others. This is more fully amplified in Headquarters Appeal No. 338.

As is also brought out in Headquarters Appeal No. 338, there is no question of "double jeopardy" present in proceedings of this nature because this is not a penal action or a criminal prosecution but it is a remedial sanction which has deprived Appellant of the use of his Merchant Mariner's Document. The "double jeopardy" clause is inapplicable unless the proceeding is essentially a criminal one and such is not the case here because:

1. This is a proceeding directed against Appellant's document and not against his "life or limb." Hence, there is no punitive element predominating; and
2. The degree of proof required in this proceeding is different than that which is required in a criminal prosecution.

It can be understood from the above that Appellant's previous imprisonment under a Federal

court conviction for this offense does not constitutionally, or otherwise, make this proceeding illegal or inappropriate.

CONCLUSION AND ORDER

By Appellant's own admissions, supported by the Federal court conviction, he is clearly guilty of the offense alleged; and I have set out above the lack of merit in Appellant's contentions on appeal. On the basis of this, the order of the Examiner dated 5 May, 1949, should be, and it is, AFFIRMED.

J.F. FARLEY
Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 15th day of July, 1949.